1980

Credit: Foreign income taxes of $6, but not to exceed overall limitation of $6 for 1967	6.00
U.S. tax payable	18.00

Example 2. The facts for 1978, 1979, and 1980, are the same as in example 1, except that in 1977, to which the section 904(a)(2) overall limitation applies, N Corporation pays $18 of foreign income taxes in excess of the overall limitation and that such excess is not absorbed as a carryback to 1975 or 1976 under section 904(c). Therefore, there is no increase under section 960(b)(1) in the overall limitation for 1979 or 1980 since the amount ($48) by which the 1978 overall limitation was increased by reason of the inclusion in N Corporation's gross income for 1978 under section 951(a), less the foreign income taxes ($48) allowed as a credit which were allowable solely by reason of such inclusion, is zero. The foreign income taxes so allowed as a credit for 1978 which were allowable solely by reason of such section 951(a) inclusion consist of the $30 of foreign income taxes deemed paid for 1978 under section 960(a)(1) and the $18 of foreign income taxes for 1977 carried over and deemed paid for 1978 under section 904(c).

Example 3. (a) Domestic corporation N owns all the one class of stock of controlled foreign corporation A, which in turn owns all the one class of stock of controlled foreign corporation B. All corporations use the calendar years as the taxable year. Corporation B, after paying foreign income taxes of $30, has earnings and profits for 1978 of $70, all of which is attributable to an amount required under section 951(a) to be included in N Corporation's gross income for 1978, and $35 of which it distributes in such year to A Corporation. For 1978, A Corporation, after paying foreign income taxes of $5 on such dividend from B Corporation, has total earnings and profits of $30, all of which it distributes in such year to N Corporation, a foreign income tax of $3 being withheld therefrom.

(b) For 1979, B Corporation has no earnings and profits, but distributes in such year to A Corporation the $35 remaining of its earnings and profits for 1965. For 1979, A Corporation, after paying foreign income taxes of $5 on such dividend from B Corporation, has total earnings and profits of $30, all of which it distributes to N Corporation, a foreign income tax of $3 being withheld therefrom.

(c) For each of 1978 and 1979, N Corporation has taxable income of $100 from United States sources and claims a foreign tax credit under section 901, determined by applying the overall limitation under section 904(a)(2). The United States tax payable by N Corporation is determined as follows, assuming a corporate tax rate of 48 percent:

1978

Taxable income of N Corporation:		
U.S. sources		$100
Sources without the U.S.:		
Amount required to be included in N Corporation's gross income under section 951(a) with respect to B Corporation	$70	
Foreign income taxes deemed paid by N Corporation under section 960(a)(1) and included in N Corporation's gross income under section 78 ($30×$70/$70)	30	100
Total taxable income		200
U.S. tax payable for 1978:		
U.S. tax before credit ($200×0.48)		96
Credit: Foreign income taxes of $38 ([$30×$70/$70]+$3), but not to exceed overall limitation of $48 ($96×$100/$200)		38
U.S. tax payable		58

1979

Taxable income of N Corporation, consisting of income from U.S. sources		$100
U.S. tax before credit ($100×0.48)		48
Section 904(a)(2) overall limitation for 1979:		
Limitation for 1979 before increase under section 960(b)(1) ($48×$0/$100)		0
Plus: Increase in overall limitation for 1979 under section 960(b)(1):		
Amount by which 1978 overall limitation was increased by reason of inclusion in N Corporation's gross income under section 951(a) for 1978 ($48 − [($100×0.48)×$0/$100])	$48	
Less: Foreign income taxes allowed as a credit for 1978 which were allowable solely by reason of such section 951(a) inclusion ($38 − $0)	38	
Balance	10	
But: Such balance not to exceed foreign income taxes paid and deemed paid by N Corporation for 1979 with respect to $30 distribution excluded under section 959(a)(1) ([$5×$30/$30]+$3)	8	8
Overall limitation for 1979		8
U.S. tax payable for 1979:		
U.S. tax before credit ($100×0.48)		48
Credit: Foreign income taxes of $8 ($3+$5), but not to exceed overall limitation of $8 for 1979		8
U.S. tax payable		40

[T.D. 7120, 36 FR 10859, June 4, 1971, as amended by T.D. 7649, 44 FR 60089, Oct. 18, 1979]

§ 1.960–5 Credit for taxable year of inclusion binding for taxable year of exclusion.

(a) *Taxes not allowed as a deduction for taxable year of exclusion.* In the case of any taxpayer who—

(1) Chooses to claim a foreign tax credit as provided in section 901 for the taxable year for which he is required to

include in gross income under section 951(a) an amount attributable to the earnings and profits of a controlled foreign corporation, and

(2) Does not choose to claim a foreign tax credit as provided in section 901 for a taxable year in which he receives an amount which is excluded from gross income under section 959(a)(1) and which is attributable to such earnings and profits of such controlled foreign corporation,

No deduction shall be allowed under section 164 for the taxable year of such exclusion for any foreign income taxes paid or accrued on or with respect to such excluded amount.

(b) *Illustration.* The application of this section may be illustrated by the following example:

Example. Domestic Corporation N owns all the one class of stock of controlled foreign corporation A. Both corporations use the calendar year as the taxable year. All of A Corporation's earnings and profits of $80 for 1978 (after payment of foreign income taxes of $20 on its total income of $100 for such year) are attributable to amount required under section 951(a) to be included in N Corporation's gross income for 1978. For 1978, N Corporation chooses to claim a foreign tax credit for the $20 of foreign income taxes which for such year are paid by A Corporation and deemed paid by N Corporation under section 960(a)(1) and paragraph (c)(1) of §1.960–1. For 1979, A Corporation distributes the entire $80 of 1978 earnings and profits, a foreign income tax of $8 being withheld therefrom. Although N Corporation does not choose to claim a foreign tax credit for 1979, it may not deduct such $8 of foreign income taxes under section 164. Corporation N may, however, deduct under such section a foreign income tax of $4 which is withheld from a distribution of $40 by A Corporation during 1979 from its 1979 earnings and profits.

[T.D. 7120, 36 FR 10859, June 4, 1971, as amended by T.D. 7649, 44 FR 60089, Oct. 18, 1979]

§ 1.960–6 Overpayments resulting from increase in limitation for taxable year of exclusion.

(a) *Amount of overpayment.* If an increase in the limitation under section 960(b)(1) and §1.960–4 for a taxable year of exclusion exceeds the tax (determined before allowance of any credits against tax) imposed by chapter 1 of the Code for such year, the amount of such excess shall be deemed an overpayment of tax for such year and shall be refunded or credited to the taxpayer in accordance with chapter 65 (section 6401 and following) of the Code.

(b) *Illustration.* The application of this section may be illustrated by the following example:

Example. Domestic corporation N owns all the one class of stock of controlled foreign corporation A. Both corporations use the calendar year as the taxable year. For 1978, A Corporation has total income of $100,000 on which it pays foreign income taxes of $20,000. All of A Corporation's earnings and profits for 1978 of $80,000 are attributable to an amount which is required under section 951(a) to be included in N Corporation's gross income for 1978. By reason of such income inclusion N Corporation is deemed for 1978 to have paid under section 960(a)(1), and is required under section 78 to include in gross income for such year, the $20,000 ($20,000×$80,000/$80,000) of foreign income taxes paid by A Corporation for such year. Corporation N also derives $100,000 taxable income from sources within the United States for 1978. For 1979, N Corporation has $25,000 of taxable income, all of which is derived from sources within the United States. No part of A Corporation's earnings and profits for 1979 is attributable to an amount required under section 951(a) to be included in N Corporation's gross income. During 1979, A Corporation makes one distribution consisting of its $80,000 earnings and profits for 1978, all of which is excluded under section 959(a)(1) from N Corporation's gross income for 1979, and from which distribution foreign income taxes of $10,000 are withheld. For 1978 and 1979, N Corporation claims the foreign tax credit under section 901, determined by applying the overall limitation under section 904(a)(2). The United States tax of N Corporation is determined as follows for such years, assuming a corporate tax rate of 22 percent, a surtax of 26 percent and a surtax exemption of $25,000:

1978

Taxable income of N Corporation:		
U.S. sources		$100,000
Sources without the U.S.:		
Amount required to be included in N Corporation's gross income under section 951(a)	$80,000	
Foreign income taxes deemed paid by N Corporation under section 960(a)(1) and included in N Corporation's gross income under section 78 ($20,000×$80,000/$80,000)	20,000	100,000